

been acquired under the Act allowing owners of lots to extend them into the water, it must now be considered as the property of the State. 1745, ch. 9; *Harrison v. Sterett*, 4 H. & McH. 540.

But considering the bed of this basin as being property, like all the other lands of the State, which are covered with navigable water, to which a legal title might have been acquired by any one from the land office, subject to the uses of navigation, &c.; or as being property; a title to portions of which might have been acquired according to the Act allowing certain lots to be improved; 1745, ch. 9; yet it appears, that both of those modes of acquiring title to it were, in some respects, modified by a subsequent Act of Assembly, by which it is declared, that the port wardens should ascertain the course of the channel; that no wharf should be extended into the basin, so as to divert the course of the channel; and that no person should make a wharf without the permission of the port wardens; who were directed to prevent any obstruction to the navigation, and to keep the harbor clear for the use of *vessels. April, 1783, ch. 24, s. 8 and 9; 1753, ch. 27. Whence it appears, that no wharf can be extended **471** beyond the margin of the channel, even with the consent of the port wardens. And these port wardens having, as directed by this law, made a survey designating the lines of the channel, that is the line, now commonly called the port warden's line, beyond which no improvements can be made into the basin.

These provisions do certainly restrict the mode of acquisition given by the Act for making improvements; 1745, ch. 9; and assist in giving perpetuity to the public right of navigation with which the soil was originally encumbered, by requiring, that care should be taken to keep it always free from obstruction. This last Act, it is therefore evident, cannot be so construed as to give any additional facilities to acquiring title to, and making fast land of any portion of the bed of the basin; but, on the contrary, as directly curtailing those means by which a title to, and the use of it, might previously have been obtained. The port wardens could give to no one a right to encroach upon the basin in any direction, or to make a wharf where, prior to the passage of this law, he had no such right; they might limit and control the then existing powers of individuals, but could give them no new powers or rights whatever. This is the view which has long since been taken of this law by the Courts of justice. *Harrison v. Sterett*, 4 H. & McH. 540; *Smith v. Hollingsworth*, ante, 381.

Hence it is manifest, that the permission given by the port wardens to John Smith, to fill up and build a wharf on eleven feet of Gay street, was wholly illegal and a mere nullity; and as to the farther encroachment upon Gay street, it has not been intimated, that Smith and others had even a pretext or shadow of legal authority to do what has been done by them.